

ORDER NO. 1565

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Priority Mail Contract 12 (MC2009-28)
Negotiated Service Agreement

Docket No. CP2009-38

ORDER GRANTING EMERGENCY MOTION OF THE
UNITED STATES POSTAL SERVICE FOR TEMPORARY RELIEF

(Issued December 5, 2012)

On December 3, 2012, the Commission accepted for filing an Emergency Motion of the United States Postal Service for Temporary Relief.¹ The Emergency Motion seeks a second retroactive temporary extension of the negotiated service agreement approved in this proceeding (Existing Agreement) for an additional 30 days.

¹ Emergency Motion of United States Postal Service for Temporary Relief, December 3, 2012 (Emergency Motion). The Postal Service filed its Emergency Motion at 4:33 p.m. on Friday, November 30, 2012. However, pursuant to the Commission's docketing procedures, because the filing was after the 4:30 p.m. November 30, 2012 filing deadline, the document was not accepted for docketing until Monday, December 3, 2012. The Postal Service should have changed the date of the document pursuant to the pop-up box warning automatically provided by the Commission's website when filings do not meet the 4:30 p.m. deadline.

Pursuant to Order No. 1523, of the instant docket, the Existing Agreement expired on Thursday, November 29, 2012.² In Order No. 1523, the Commission also provided guidance regarding motions such as the Emergency Motion. In particular, the Commission found:

While the Commission appreciates that contract negotiations may become protracted, absent compelling circumstances, motions for temporary relief such as the instant Motion should be filed at least one week prior to the contract's expiration date.

Id. at 2.

In this case, the Postal Service represents that it had not heard from its contract partner in recent weeks and assumed that the contract would terminate as of November 30, 2012. Emergency Motion at 1. However, it states that on November 30, 2012, as an “unexpected development”, the Postal Service received word from the contract partner of its willingness to sign a replacement contract within the next week. *Id.* It also explains that the contract partner requested that the Postal Service file the instant Emergency Motion to extend the Existing Agreement's expiration date.

The Postal Service acknowledges that this request “falls well short” of the Commission's prior guidance, but asserts that “the unique circumstances surrounding the Postal Service's belief that negotiations had failed and that the contract would be allowed to expire, hopefully serve to provide the Commission with a basis” to grant the Emergency Motion. *Id.* at 1-2.

A review of the Postal Service's temporary relief requests in this case is instructive. Pursuant to its original terms, the Existing Agreement was set to expire on July 2, 2012.³ On June 13, 2012, the Postal Service filed its first motion for temporary

² Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012 (Order No. 1523).

³ See Docket No. MC2009-28 and CP2009-38, Order No. 232, Order Concerning Priority Mail Contract 12 Negotiated Service Agreement, July 1, 2009, at 2.

relief requesting a 60-day extension of the Existing Agreement's expiration date.⁴ On June 20, 2012, the Commission granted this request and extended the Existing Agreement's expiration date through August 31, 2012.⁵ On August 16, 2012, the Postal Service filed its second motion for temporary relief requesting another 60-day extension of the Existing Agreement's expiration date.⁶ On August 17, 2012, the Commission granted this request and extended the Existing Agreement's expiration date through October 30, 2012.⁷ On October 31, 2012, the Postal Service filed its third motion for temporary relief requesting a retroactive additional 30-day extension of the Existing Agreement's expiration date.⁸ On November 1, 2012, the Commission granted this request and extended the Existing Agreement's expiration date through November 29, 2012. Order No. 1523 at 3.

Thus, the Emergency Motion is the Postal Service's fourth request for an extension of the Existing Agreement's expiration date. The Existing Agreement has, thus far, been extended for approximately five additional months beyond its originally contemplated terms. With each request, the Postal Service indicated to the Commission that it expected to reach agreement on a new contract shortly.⁹

The Commission grants the Emergency Motion prospectively. Given the history of this docket, and the Commission's guidance in Order No. 1523, it is not appropriate to grant the request for an extension of the Existing Agreement retroactively. Instead, the Existing Agreement is authorized to be in effect for 30 days from the date of this Order until January 4, 2013. During the interim period in which the Existing Agreement

⁴ Motion of the United States Postal Service for Temporary Relief, June 13, 2012 (Motion No. 1).

⁵ Order No. 1374, Order Granting Motion for Extension, June 20, 2012.

⁶ Motion of the United States Postal Service for Temporary Relief, August 16, 2012 (Motion No. 2).

⁷ Order No. 1440, Order Granting Motion for Temporary Relief, August 17, 2012.

⁸ Motion of the United States Postal Service for Temporary Relief, October 31, 2012 (Motion No. 3).

⁹ See Motion No. 1 at 2 ("in the next few weeks"); Motion No. 2 at 1 ("in the near future"); Motion No. 3 at 1 ("within the next week"); Emergency Motion at 1 ("within the next week").

has lapsed, the contract partner shall pay the approved published rates for its Priority Mail pieces.

It is ordered:

1. The Emergency Motion of the United States Postal Service for Temporary Relief, filed November 30, 2012, is granted, as discussed in the body of this Order.
2. The Priority Mail Contract 12 agreement subject to this docket is authorized to be in effect for 30 days from the date of this Order until January 4, 2013.

By the Commission.

Shoshana M. Grove
Secretary

CONCURRING OPINION OF CHAIRMAN GOLDWAY

I concur in the result of my colleagues' decision, but write separately in this case to express my additional views.

The protracted negotiations that have given rise to this highly unusual Postal Service request are troubling. As discussed in this Order, this is the Postal Service's fourth request for an extension of the agreement originally scheduled to expire on July 2, 2012. With each prior extension request, the Postal Service represented to the Commission that a new replacement agreement would be signed shortly. It appears that the Postal Service has previously overestimated the success of prior negotiations. I am hopeful that as the Postal Service becomes more experienced with contract renewal negotiations, it will better anticipate its contract partners' negotiation techniques. As a result, the Commission should see less of these types of motions.

If additional such extension requests do come before the Commission, the Postal Service should provide the Commission with enough information for making a determination on the relevance of contract negotiation difficulties before expecting approval of such agreements.

Ruth Y. Goldway